

THE ASSISTIVE TECHNOLOGY ACT OF 2004: WHAT DOES IT SAY AND WHAT DOES IT MEAN?

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On October 25, 2004, President Bush signed into law the reauthorization of the Assistive Technology Act (AT Act). The new law provides a far more optimistic future for assistive technology (AT) and modifies the primary purpose of the previous law. The new AT Act provides "birth to death" legislation and is fundamentally different from other special education legislation such as the Individuals with Disabilities Education Act (IDEA), which focuses only on children, or the Vocational Rehabilitation Act, which focuses on adults. The AT Act is intended to impact anyone, child or adult, who has a disability as defined under any federal law. Further, the AT Act defines eligibility as anyone who has a disability that can be "enabled" by an AT device or service to "minimize deterioration in functioning, to maintain a level of functioning, or to achieve a greater level of functioning in any major life activity." With this broad definition of eligibility, the AT Act can be assumed to assist many of the 54 million individuals currently identified with a disability.

BACKGROUND

In 1988, Congress passed P.L. 100-407, the original Technology-Related Assistance for Individuals with Disabilities Act, later referred to as the "Tech Act." That law provided funding to develop statewide, consumer-responsive information and training programs designed to meet the AT needs of individuals with disabilities of all ages. Aside from the direct implications of the law in supporting statewide and national programs, the Tech Act was the first to define an AT device as "any item, piece of equipment, or product system whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities." Further, the Tech Act defined an AT Service as "any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive device." These first federal definitions of AT were later adopted in other legislation, most notably in IDEA. The Tech Act also mandated that the federal government identify policies and obstacles, which placed a barrier for the provision and payment for AT.

The specific purposes of the original Tech Act were to (a) increase awareness of the needs of individuals with disabilities for AT devices and services, (b) increase awareness of policies and procedures that facilitate or impede the acquisition of AT, (c) improve the availability of funding for AT, (d) expand the knowledge of applications of AT devices and services, and (e) promote coordination among state agencies and public and private entities that provide AT devices and services.

The Tech Act accomplished its goals through a variety of mechanisms, including competitive grants for states to plan and implement a consumer responsive system of technology services. Limited, but growing, appropriations and the competitive application process permitted a gradual increase in the number of states obtaining funds. The first states to receive the five-year grants were Arkansas, Colorado, Illinois, Kentucky, Maine, Maryland, Minnesota, Nebraska and Utah. Although it took several years for all states to be phased into the funding stream, eventually all 50 states and 6 territories received funding.

The Tech Act was reauthorized in 1994 and the mandate to support state AT programs was extended for another 5 years. In the 1994 reauthorization, some changes were made to the law's objectives and its funding scheme to the state programs. The Tech Act continued to require states to make major systemic changes in the provision of AT services. The Act gave states the authority to suggest changes to public agencies to accomplish that goal. Also, the states were directed to use some funds to support Protection and

Advocacy services to address the legal needs of individuals with disabilities as they attempted to acquire AT devices or services. However, the 1994 amendments included a sunset provision indicating that federal funding would begin to decrease in the final three years of the program and would be eliminated at the end of 10 full years of funding. It was anticipated that states would take fiscal responsibility for those programs when federal funding ceased.

THE ASSISTIVE TECHNOLOGY ACT OF 2004

The new AT Act of 2004 reauthorizes support for the state AT programs for five years, however, without the sunset provision as stipulated in 1998. This means that state programs can expect funding through the life of the bill assuming funds are appropriated, as is the case with most government programs. Because FY 2005 appropriations were set, although not approved, when the President signed the AT Act, any significant increases for Tech Act programs will probably have to wait for the FY 2006 appropriations. The President's budget request, due in February 2005, will be the first indication if such increases are likely to be included.

In another new provision, the bill authorizes a "minimum allotment" to state and territorial programs. Under this provision, \$410,000 will be allotted annually for states and \$125,000 for territories, again dependent on future appropriations. The bill also provides that no state already having more than the minimum allotment will lose funding in order to bring other states to the minimum level. Hopefully, future appropriations will follow this authorization. (For more information, see http://www.ucp.org/ucp_generaldoc.cfm/1/8/33/12109-12435/5826.)

The Assistive Technology Act of 2004 continues the tradition of the preceding Tech Acts by setting goals to increase the availability of funding for access to, provision of, and training about AT devices and services. In addition, the new law hopes to (a) increase the use of AT in the transition from one program to another, (b) increase the involvement of individuals and their families in the decision making process, (c) increase the capacity of public agencies to provide and pay for AT, (d) increase coordination among agencies, (e) facilitate the change in AT laws and policies, and (f) increase awareness and knowledge of the benefits of AT. The AT Act proposes to accomplish this through both state and national projects discussed in later sections of this article.

TECH ACT ADMINISTRATION

While the administration of the bill remains the responsibility of Department of Education, the Rehabilitation Services Administration (RSA) will now be given the responsibility to oversee the AT Act, replacing the National Institute on Disability and Rehabilitation Research (NIDRR). This change suggests that the Congress sought to place the implementation of the AT Act in an office more sensitive to the task of program management. In addition, the Secretary of Education is given authority to award separate grants for state alternative financing projects. At the state level, the governors will continue to appoint the lead agency for the state projects. (A listing of the lead agency in each state is available at <http://www.ataporg.org/stateatprojects.asp>.) Also, each state project will create a broad-based consumer-driven advisory council that must be made up of individuals with disabilities and their families, representatives from specified state agencies, independent living centers, the state workforce board, and other public and private entities. State applications to RSA must include measurable goals that are developed with input from public and private organizations in states.

FUNDING

The bill sets a minimum funding level of \$410,000 for each State Assistive Technology Project with a minimum of 90% of the funds to be spent on direct services for individuals with disabilities. Congress will allow states to choose between two options for AT state grants. The first option will allow states to use 60% of AT state grant funds on direct aid programs, including AT reutilization programs, AT demonstration programs, alternative financing programs, and device loan programs. The remaining 40% of the funds may be used for state leadership activities. States may distribute the monies as they wish within these four required activities. They are also encouraged to support any of these activities with non-federal monies, and therefore free-up federal dollars. As an alternative, but in keeping with the intent of maximizing state programs that directly serve consumers, they can use 70% of the AT state grant funds on direct aid programs to finance two of the state programs listed above. This would leave states with 30% of the funds for leadership activities. (For more information, see <http://edworkforce.house.gov/Issues/108th/education/at/billsummary.htm>.)

STATE ACTIVITIES SUPPORTED BY THE AT ACT

As in previous authorizations of the AT Act, funds appropriated under the Act cannot be used for direct payment for devices for individuals but they can be used to support and run programs that make access to devices feasible. Alternative financing programs are supported and they are intended to maximize the limited dollars. In these programs, federal monies can be used to create (a) a low-interest loan fund where interest is kept at the lowest possible level, (b) a revolving loan program in which monies used to repay old loans are recycled to finance new ones, (c) a loan guarantee or insurance program where borrowers are able to obtain loans because the Alternative Financing Programs guarantees to repay them if the borrowers do not, and (d) an interest buy-down loan program where the Alternative Financing Program uses its funds to buy-down the interest rate to a level which is more affordable. In 2003, 16 such Alternative Financing Programs issued 1,175 loans totaling almost \$13 million.

As noted, the bill also requires states to spend no more than 40% (or 30% under the flexibility rule) of their federal funds on required state leadership activities (i.e., training & technical assistance, public awareness, and coordination & collaboration with other government and private entities). Allowable activities in this category include, but are not limited to, skills development training in assessing the need for AT, extensive public awareness training, and integrating AT into Individualized Education Programs (IEP) or other such plans.

Protection and Advocacy Services have been part of previous AT Acts and are intended to provide individuals with disabilities with legal support, if needed, to obtain AT devices and services. In the AT Act of 2004, the grants for state protection and advocacy programs on AT are continued and given their own budget line. In addition, the legislation adds a Protection and Advocacy for Assistive Technology program to the American Indian Consortium in the Southwestern United States.

It is noteworthy to mention that the state projects are required to spend 5% of their total dollars on transition activities, including support for students who are receiving transition services under IDEA. Finally, extensive annual progress reports are required from each state project with detailed data showing the impact these dollars are having in the state.

NATIONAL ACTIVITIES SUPPORTED BY THE AT ACT

In addition to state activities, the AT Act of 2004 provides for several national projects to be awarded on a competitive basis. These include the development of a National Public Awareness Toolkit, research and development activities, training and technical assistance to the state projects, and the continuation of an existing AT website. The intent of the National Toolkit is to expand public-awareness of AT. The Toolkit is to contain accessible multimedia materials and provide up-to-date information about AT devices.

A total of \$665,000 is specifically targeted for research and development efforts. The goals are to (a) establish standards for reliability and accessibility of AT, (b) establish standards for interoperability (including open standards) of AT with information technology, and (c) develop telecommunications products and other assistive technologies. In addition, research and development monies are available to develop assistive technologies that benefit individuals with disabilities or practices that result in the adaptation, maintenance, servicing, or improvement of AT devices.

Further, the AT Act supports national activities to provide a training and technical assistance program to (a) address state-specific information requests on AT related issues, (b) disseminate information about AT related issues, and (c) provide national, regional, and state-specific training and technical assistance on AT issues. Support will also be provided at the national level to maintain an extensive informational and interactive website to assist individuals in selecting AT devices, and locating services and resources.

Finally, the law will provide for a national project to support state AT programs in developing and implementing effective data-collection and reporting systems to measure outcomes and benefits of AT. It is anticipated that all persons with disabilities including students, their families, and their teachers are likely to benefit as the results of these projects either become available or are disseminated to the field.

IMPLICATIONS

Although school-age children with disabilities, including those with physical disabilities, will continue to receive the bulk of their services from IDEA, which mandates that all students with an IEP must be considered for AT, the AT Act will also have several implications for students. The primary benefits of the AT Act for children will revolve around the proposed and existing

state-run awareness and information activities. It is anticipated that increased awareness on the part of children, their families, teachers, administrators, and others will improve the likelihood that students will receive the AT devices and services that they need.

Also of particular relevance to students will be the device reutilization, device demonstration, and device loan programs at the state level. The availability of AT devices for trial periods should aid school districts in the selection of appropriate AT devices for students with disabilities. Under the new law, states are also obligated to provide device demonstrations and comprehensive information about AT devices to individuals with disabilities. Parents and educators should monitor the activities of their state tech act project for announcements about such information and demonstration opportunities. Most state projects have a website and/or mailing lists that announce those sessions.

Furthermore, the continuing systemic changes at the state government level can help to reduce the barriers that exist between government offices that support infants, preschoolers, school aged children and adults. Increased communication and cooperation between those often-disparate groups, should ultimately benefit students with disabilities and their families.

The alternative funding programs will be of less direct benefit to students with disabilities who are eligible for IDEA funding to meet their AT needs. However, as students complete school and lose their IDEA protection, they may need AT funding for secondary education, vocational training, or in the work place. In such cases, it is possible that the alternative funding programs may be necessary to help them obtain the devices on which they relied while under IDEA.

Finally, the national projects funded under the AT Act are likely to benefit students currently served under IDEA. Parents, teachers, administrators, and students will be provided information through the national website and have access to the National Public Awareness Toolkit. The Toolkit, as mentioned previously, will contain accessible materials and information pertinent to persons with physical disabilities, multiple disabilities, and special health care needs. It is also anticipated that the support provided to research and development activities will benefit all persons with disabilities including children.

CONCLUSION

We should be pleased that the 108th Congress was able to work in a bi-cameral, bi-partisan fashion to move AT reauthorization along a fast track and

that it was signed by the President. Despite conflict on other issues facing the 108th Congress, both parties in both houses agreed that some of the needs of individuals with disabilities can be addressed through technological advances. A reading of the Findings at the beginning of the bill includes the statement that the Congress finds that technology plays an “increasingly important role” in the lives of all Americans and that developments in mainstream technology will have “profound implications” for individuals with disabilities. Congress continues to find that “substantial progress” has been made in the development of AT devices and spells out some of the benefits in the use of such devices.

The removal of the “sunset” provision should allow the state projects to develop meaningful longer-term plans that can be of assistance to all individuals with disabilities. In addition, a more reliable stream of funding will permit the project to hire qualified individuals. Furthermore, the minimum funding levels, plus the Congressional commitment to the program on a longer term, suggests that the appropriators will be more generous in funding the entire program.

As Senator Judd Gregg (R-NH), Chairman of the Senate Committee on Health, Education, Labor and Pensions said, “This program is relatively small, but to those who benefit, it can be life-changing.” He continued by stating that, “Individuals with a range of disabilities—from hearing loss to motor skill impairment—can with a small amount of individualized assistance, have the opportunity to lead fuller, more productive lives. This bill improves access to assistance by fostering public-private partnerships, improving access to technology and stabilizing state funding streams so devices and services are within reach of individuals with disabilities.”

RESOURCES FOR FURTHER INFORMATION:

The Association of Assistive Technology Act Programs (ATAP):

<http://www.ataporg.org/>—A national, member-based organization, comprised of state Assistive Technology Act Programs funded under the Assistive Technology Act (AT Act). This site will also provide links to the text of the bill.

The Assistive Technology Act in Word format:

<http://www.ataporg.org/Final%20AT%20Act%20Sept%2030%202004.doc>

The Assistive Technology Act in PDF format:

<http://www.ataporg.org/Senate%20final%20AT%20Act%20sept%2030.pdf>

A statement on the bill from the House Education and Workforce Committee:

<http://edworkforce.house.gov/issues/108th/education/at/billsummary.htm>

Comments from disability advocates, including CEC:

http://www.ucp.org/ucp_generaldoc.cfm/1/8/33/12109-12435/5826

http://abilitymagazine.com/Technology_Act.html

<http://www.easterseals.com/site/DocServer?docID=7883>

http://www.cec.sped.org/pp/legislative_update/modules/news/article.php?storyid=84

http://www.ucp.org/ucp_generaldoc.cfm/1/11211/11211/11211-11211/2443

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